IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1046 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PINALBHAI KANTIBHAI PATEL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR IH SYED for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/10/2007

ORAL JUDGMENT

By way of this petition under Articles 226 and 227 of the Constitution of India read with section 482 of Criminal Procedure Code, the petitioners herein, - original accused have prayed for an appropriate order to quash and set aside the

complaint/FIR being C.R. No. I 203 of 2007 registered with Anand town Police Station for the offence u/s 406, 467, 477(6) and 120-B of the IPC.

2. A criminal complaint being C.R. No.I 203 of 2007 is filed by one Harishbhai C. Patel, alleged to be the Chairman of one Charotar Education Society, Anand against the petitioners for the offence u/s 406, 467, 477(6) and 120-B of the IPC alleging inter alia that in the account of the society, an amount of Rs.4,84,000/- is not shown and that there is misappropriation of the said amount. It is also further alleged that some bogus members were created for election purposes and their names were entered in election role, they are related and their only purpose was to see that the members may cast votes in favour of the candidate of their choice. As per the complaint, receipts were subsequently prepared and amount of Rs.4,84,000/- were misappropriated. It is the contention of the petitioners that earlier for the said offence and/or its similar allegations, the complaint was given by one Jayantibhai Ambalal Patel, member of the Charotar Education Society on 24-2-2007 to the Police Inspector, Anand Town Police Station and the said complaint was transferred to Economic Cell and the Investigating Officer of the Economic Cell has made inquiry into the matter and submitted his report on 6-3-2007 to the DSP, Anand and the said report shows that the petitioners have not played any role in the alleged misappropriation of the fund of the society. It is submitted that being dissatisfied with the report of the Economic Cell, Shri Jayantibhai Patel instigated the Chairman of the society to lodge a criminal complaint against the

petitioners. It is also further submitted that one another complaint being C.R. No. I 204 of 2007 is also filed by a member of the society. It is also the case of the petitioners that proceedings were initiated by the petitioner No.1 before the Joint Charity Commissioner being application No.9 of 2007 against Harishbhai Patel and Dineshbhai Patel and the Joint Charity Commissioner, Vadodara decided the application in favour of the society and thereby, the charge of the society is handed over to the petitioner No.2. It is the case of the petitioners that the investigating team of the Economic Cell had come to the conclusion that the petitioners are innocent and have not committed any misappropriation of funds of the society. It is submitted that though the complainant is not the Chairman of the Society, he is posing himself to be the Chairman of the society by misinterpreting the order passed by the Joint Charity Commissioner. It is submitted that to get out of the order passed by the Joint Charity Commissioner, the impugned complaint has been filed. It is also further submitted that even in the complaint, there is no reference to the order passed by the Joint Charity Commissioner passed in May 2007 and there is a suppression to that effect.

3. Shri Syed, learned advocate appearing on behalf of the petitioners has vehemently submitted that once the application/complaint given by Jayantibhai Patel, if the same allegation was investigated by the Economic Cell and it was reported to the DSP accordingly as there cannot be any second complaint for the same offence and/or same allegation and the second complaint itself is not maintainable and therefore, it is

requested to allow the present petition and to quash and set aside the impugned FIR being C.R. No. 203/07 registered with Anand Town Police Station. Shri Syed has relied upon the decision of the Hon'ble Supreme Court in the case of **Bhaurao Dagdu Paralkar V. State of Maharashtra and others reported in (2005) 7 SCC 605**. He has submitted that considering para 9 of the aforesaid judgment, it cannot be said that the petitioners have committed any offence of fraud. It is also further submitted that earlier proceedings have been suppressed and even the earlier inquiry report is also suppressed and therefore, it is requested to allow the present petition.

4. The petition is opposed by Shri KT Dave, ld. APP and has submitted that so far as the investigation/ inquiry by the Economic Cell and the report submitted by the Economic Cell is concerned, as such there was no registration of the FIR and the earlier application was never registered as FIR. It is submitted that even there was no summary report submitted by the Police Inspector of Economic Cell, otherwise, considering the various provisions of the Criminal Procedure Code, if any report could have been submitted, in that case, the same was required to be submitted before the ld. Magistrate, who will suppose to issue notice upon the original complainant and before accepting the said report, an opportunity was required to be given to the complainant. Under the circumstances, it is submitted that so far as the impugned complaint/FIR is concerned, *stricto senso*, it cannot be said that it is a second complaint as alleged. He has relied upon the decision of the Hon'ble Supreme Court in the

case of **Mahesh Chand V. B. Janardhan Reddy and another reported in (2003)1 SCC 734** and has submitted that as held by the Hon'ble Supreme Court, as such there is no specific bar of second complaint under the provisions of the Criminal Procedure Code. He has also further submitted that looking to the allegations and averments in the complaint, it prima facie discloses cognizable offence which requires further investigation and unless ad until, the evidence is collected, the investigation is not required to be stalled at the threshold. He has also relied upon the decisions of the Hon'ble Supreme Court in the case of **State of Orissa and another V. Saroj Kumar Sahoo reported in 2005(13) SCC 540.** Under the circumstances, it is requested to allow the present petition.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. The main submission on behalf of the petitioner is that earlier one application was given by Jayantibhai Ambalal Patel to the Police Inspector, Anand Town Police Station with a similar grievance and the allegations which are made in the impugned FIR and the said application was sent to the Police Inspector, Economic Cell and the same was investigated by him and it was found by him that there is no misappropriation of fund as alleged by the petitioners and that the petitioners have not played any role in the alleged misappropriation of the fund of the society and therefore, the second complaint being C.R. No. I 203 of 2007 is not maintainable. Now, it appears that the said application/complaint given by said Jayantibhai Ambalal Patel

was never registered as FIR and it might be that some preliminary inquiry might have been done by the Police Inspector, Economic Cell. It also borne out from the record that as the said complaint was not registered as FIR, there was no occasion for the Investigating Officer, Economic Cell to submit the summary report before the ld. Magistrate and as such, there is no summary report submitted by the Police Inspector, Economic Cell. IF the FIR ought to have been registered and after investigation, if it is found that no case is made out against the petitioners, in that case, summary report was required to be submitted by the Investigating Officer before the concerned Magistrate and it is ultimately for the ld. Magistrate to consider, on appreciation of evidence, whether to accept the said report or not and that too after giving an opportunity to the complainant to submit its objection. In the present case, no such opportunity is given to the original complainant/ applicant Jayantibhai and no such report has been submitted by the ld. Magistrate. Under the circumstances, *stricto senso*, it cannot be said that the impugned complaint/FIR is a second complaint. Even as per the Hon'ble Supreme Court in the case of Mahesh Chand (supra), there is no bar of second complaint under the provisions of the Criminal Procedure Code and at the most, during the course of the second investigation, the earlier report, if any is required to be considered. The Hon'ble Supreme Court has held and observed as under:

> ***“It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case, where a previous complaint is dismissed without assigning any reasons, the Magistrate***

under section 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceedings."

7. Under the circumstances, the contentions on behalf of the petitioners that the impugned FIR being C.R. No.203/07 registered with Anand Town Police Station is a second complaint and therefore, the same requires to be quashed and set aside cannot be accepted and the same is hereby rejected.

8. Now, so far as the contention and submission of the petitioners that the Joint Charity Commissioner has already decided in favour of the petitioners and has held that there is no misappropriation by the petitioners and the petitioners have not committed any fraud and therefore, the impugned complaint requires to be quashed and set aside is concerned, it appears from the bare reading of the FIR that looking to the averments and allegations, prima facie cognizable offence under the IPC are made out which requires further investigation. At the time of investigation/inquiry, the concerned Investigating Officer is required to consider everything inclusive of the order passed by the Joint Charity Commissioner. Even, otherwise, so far as the criminal proceedings are concerned, any observations of the Joint Charity Commissioner is not binding to the Investigating Officer and/or the Magistrate. Even, it is the case of the petitioners that by misinterpreting and/or misinterpretation of the order passed by the Joint Charity Commissioner, the complainant herein is posing himself as a Chairman/ President of the society. Thus, there is a dispute of interpretation of the

order passed by the Joint Charity Commissioner. Be that as it may, as held by the Hon'ble Supreme Court in Saroj Kumar Sahoo (supra) unless and until, the evidences are collected and when a prima facie cognizable case is made out, the complaint is not required to be quashed and set aside at the threshold in exercise of powers u/s 482 of Criminal Procedure Code. The Hon'ble Supreme Court has observed as under:

> ***11. The powers possessed by the High Court under Section 482 of the Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary, [1992] 4 SCC 305, and Raghubir Saran (Dr.) v. State of Bihar, AIR (1964) SC 1). It would not be proper for the High***

Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

Thus, after investigation, if no case is made out against the petitioners, an appropriate report will be submitted by the Investigating Officer before the ld. Magistrate and the ld. Magistrate will consider the same whether to accept the said report or not and if the ld. Magistrate is of the opinion that the said report is to be accepted, in that case, an opportunity is to be given to the original complainant to submit its objection. If, ultimately, the charge sheet is filed against the petitioners after investigation, in that case, if the petitioners are still dissatisfied, the petitioners have remedy available by way of submitting appropriate application for discharge and the same can be considered in accordance with law and on its own merits. However, looking to the averments and allegations, it appears to the Court that it requires further investigation and it is not a case to stall the investigation at the threshold in exercise of powers u/s 482 of Criminal Procedure Code. It is also required to be noted that in the present proceedings, even the petitioners have not joined the original complainant as party respondent and in absence of the original complainant, the petitioners are not entitled to any relief of quashing and setting aside the impugned FIR. On this ground also, the present petition requires

dismissal.

9. For the reasons stated above, the petition fails and is accordingly dismissed.

(M.R. Shah, J.)

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